

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-219645 **DATE:** October 25, 1985
MATTER OF: A & A Roofing Co., Inc.

DIGEST:

Bid bond is defective where it misidentifies solicitation it is intended to cover, but actually identifies another solicitation recently issued by the same procuring agency and bears no evidence that the surety consented to be bound on the solicitation with which it is submitted. Defect in bond, allegedly caused by clerical error, may not be waived since under the circumstances it is not clear that government received an enforceable bond covering subject solicitation.

A & A Roofing Co., Inc. protests the rejection of its bid and award to Consolidated Enterprises, Inc. under invitation for bids (IFB) No. DAKF70-85-B-0075 issued by the Army for the reroofing of several buildings at Fort Wainwright, Alaska. The Army rejected A&A's bid as nonresponsive because the bid bond submitted with the bid was defective. We deny the protest.

IFB -0075 was issued on May 24, 1985, for the replacement of roofs on Buildings 3421, 3425, 3479, and 3485. The solicitation stated that a bid bond was required to be submitted with the bid, in accordance with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.228-1 (1984). Bid opening was originally scheduled for June 24, 1985, but by Amendment No. 0001, which was issued and mailed on June 20, bid opening date was extended to July 1, 1985.

Upon bid opening, A&A was the apparent low bidder. However, the bid bond submitted with A&A's bid referenced the solicitation as number DAKF70-85-B-0049 and the bid opening date as June 20, 1985. The solicitation number and opening date that were entered on the bid bond actually identified another Army solicitation that was issued on May 15, 1985, for the replacement of roofs on Buildings 3719, 3720, 3721, and 3723, also at Fort Wainwright. A&A had also submitted a bid in response to that solicitation

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along with a bid bond executed by the same individuals, on the same date, and in the same manner as the bond A&A submitted with its bid on IFB -0075.

Because A&A's bid bond was defective in that it referenced the wrong solicitation number and bid opening date and, otherwise, contained no objective evidence of the intent of the surety to provide a bond on IFB -0075, the Army rejected its bid as nonresponsive.

The protester contends that because the entry of the incorrect solicitation number on the bid bond is a typographical error made by its surety, the defect in the bond is a technicality which A&A should be allowed to correct. In support of this contention, A&A submitted to us a letter from the surety, in which the surety states that it has notified the contracting officer of its willingness to correct the error. The protester further contends that because it is the low bidder, it is in the best interest of the government to allow correction of the error.

The submission of a bid bond required by a solicitation is a matter of responsiveness with which there must be compliance at the time of bid opening. Baucom Janitorial Service, Inc., B-206353, Apr. 19, 1982, 82-1 C.P.D. ¶ 356. Otherwise, a bidder who failed to submit a valid bond could decide after bid opening whether or not to cause its bid to be rejected by submitting or refusing to submit the bond. Montgomery Elevator Co., B-210782, Apr. 13, 1983, 83-1 C.P.D. ¶ 400. Therefore, when a bidder submits a defective bond, the bid is rendered defective and must be rejected as nonresponsive. Truesdale Construction Co., Inc., B-213094, Nov. 18, 1983, 83-2 C.P.D. ¶ 591. The issue in this case is whether A&A's bid bond as submitted is enforceable by the government against the surety in spite of the erroneous identification of the solicitation by number and bid opening date.

In previous cases, where a bond was submitted bearing an erroneous solicitation number (Custodial Guidance Systems, Inc., B-192750, Nov. 21, 1978, 78-2 C.P.D. ¶ 355) or incorrect or irregular date entries (39 Comp. Gen. 60 (1959); J.W. Bateson Co., Inc., B-189948, Dec. 16, 1977, 77-2 C.P.D. ¶ 472), we have held that the bond was enforceable against the surety. However, in each of those cases the bond contained other indicia that specifically identified the bid covered by the bond.

In this case, however, the solicitation number and date entered on the bond specifically and accurately identified another Army solicitation for the same kind of work and at the same facility, for which A&A had submitted a bid and a bond issued by the same surety on the same date. The bid opening for that procurement had been only 11 days prior to that of the protested procurement. There was no evidence on the face of the bond to indicate that it was not in fact intended to cover IFB -0049, or that the surety had consented to be bound in the event that A&A, if awarded the contract for IFB -0075, failed to execute that contract.

The situation in this case is thus quite different from those in 39 Comp. Gen. 60, supra, and in Custodial Guidance Systems, Inc., B-192750, supra, in which we held that the bid bonds were acceptable where, because of other essential information on the face of the bonds, there was no apparent confusion as to the specific bids they covered. Here, it was at best uncertain whether, at the time of bid opening, the protester had provided the government a legally binding bid bond as required by the solicitation. Therefore, because the bid bond A&A submitted with its bid failed to identify the solicitation it covered, A&A's bid was properly rejected as nonresponsive.

The letter from A&A's surety stating that its entry of incorrect bid identification information was a typographical error which it is willing to correct cannot cure the bid defect, since as a matter of responsiveness, the adequacy of a bid bond must be determined at the time of bid opening. Design Engineers, B-214658, Apr. 10, 1984, 84-1 C.P.D. ¶ 408. Moreover, the responsiveness of a bid must be determined solely from the bid documents. Hydro-Dredge Corp., B-214408, Apr. 9, 1984, 84-1 C.P.D. ¶ 400; see also A.D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 C.P.D. ¶ 194; and Montgomery Elevator Co., B-210782, supra, 83-1 C.P.D. ¶ 400 at 2.

Concerning the protester's contention that it is in the best interest of the government to award the contract to A&A because it is the low bidder, the submission of a bid bond may not be waived where it is called for by the solicitation because it is a material requirement. Design Engineers, B-214658, supra, 84-1 C.P.D. ¶ 408 at 3. Moreover, the public interest in strict adherence to federal competitive bidding procedures required by law outweighs any financial advantage that might accrue to the government in a particular case by a violation of those procedures. Design Engineers, B-214658, supra.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel